

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

BILLY TYLER,)	8:12CV443
)	
Plaintiff,)	
)	
v.)	MEMORANDUM
)	AND ORDER
LESLEY DOUGLAS, and COUNTY)	
COURT OF NEBRASKKK)	
DOUGLAS COUNTY,)	
)	
Defendants.)	

Plaintiff filed his Complaint in this matter on December 26, 2012. (Filing No. [1](#).) Plaintiff has previously been given leave to proceed in forma pauperis. (Filing No. [5](#).) The court now conducts an initial review of the Complaint to determine whether summary dismissal is appropriate under [28 U.S.C. § 1915\(e\)\(2\)](#).

I. SUMMARY OF COMPLAINT

Plaintiff filed his Complaint on December 26, 2012, against the County Court of Douglas County, Nebraska, and the administrator of the County Court of Douglas County, Lesley Douglas (“Douglas”). (Filing No. [1](#) at CM/ECF pp. 1-2.) Plaintiff is a nonprisoner currently residing in Omaha, Nebraska. (*Id.*; *see* Docket Sheet.)

Condensed and Summarized, Plaintiff alleges he failed to appear for a hearing related to a 2010 “Drug Paraphenalia [sic]” charge. (Filing No. [1](#) at CM/ECF pp. 1-2.) Plaintiff was not notified of the hearing and states that Defendants colluded to have him arrested for failing to appear. (*Id.*) Plaintiff seeks an injunction against “future manipulated arrests” and monetary damages. (*Id.*)

II. APPLICABLE LEGAL STANDARDS ON INITIAL REVIEW

The court is required to review prisoner and in forma pauperis complaints seeking relief against a governmental entity or an officer or employee of a governmental entity to determine whether summary dismissal is appropriate. *See* [28 U.S.C. §§ 1915\(e\)](#) and [1915A](#). The court must dismiss a complaint or any portion thereof that states a frivolous or malicious claim, that fails to state a claim upon which relief may be granted, or that seeks monetary relief from a defendant who is immune from such relief. [28 U.S.C. § 1915\(e\)\(2\)\(B\)](#); [28 U.S.C. § 1915A](#).

A pro se plaintiff must set forth enough factual allegations to “nudge[] their claims across the line from conceivable to plausible,” or “their complaint must be dismissed” for failing to state a claim upon which relief can be granted. [Bell Atlantic Corp. v. Twombly](#), 550 U.S. 544, 569-70 (2007); *see also* [Ashcroft v. Iqbal](#), 129 S. Ct. 1937, 1950 (2009) (“A claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged.”). Regardless of whether a plaintiff is represented or is appearing pro se, the plaintiff’s complaint must allege specific facts sufficient to state a claim. *See* [Martin v. Sargent](#), 780 F.2d 1334, 1337 (8th Cir. 1985). However, a pro se plaintiff’s allegations must be construed liberally. [Burke v. North Dakota Dep’t of Corr. & Rehab.](#), 294 F.3d 1043, 1043-44 (8th Cir. 2002) (citations omitted).

III. DISCUSSION OF CLAIMS

Plaintiff names Douglas, the county court administrator, as a Defendant in this matter. (Filing No. [1](#) at CM/ECF p. 1.) Where a plaintiff fails to “expressly and unambiguously” state that a public official is sued in his or her individual capacity, the court “assume[s] that the defendant is sued only in his or her official capacity.” [Johnson v. Outboard Marine Corp.](#), 172 F.3d 531, 535 (8th Cir. 1999). As set forth by the Eighth Circuit:

Because section 1983 liability exposes public servants to civil liability and damages, we have held that only an express statement that they are being sued in their individual capacity will suffice to give proper notice to the defendants. Absent such an express statement, the suit is construed as being against the defendants in their official capacity.

Id. These rules have been consistently applied to municipal defendants. *See, e.g., Baker v. Chisom*, 501 F.3d 920, 924 (8th Cir. 2007) (affirming dismissal of claims based on assumption of official capacity only where the plaintiff failed to clearly state the capacity in which he intended to sue several county defendants); *Johnson*, 172 F.3d at 535 (assuming official capacity only claims and affirming grant of summary judgment in favor of county sheriffs). Further, “[a] suit against a public employee in his or her official capacity is merely a suit against the public employer. Id. Here, Plaintiff did not specify the capacity in which he sues Douglas. (Filing No. 1.) Therefore, the court assumes that Douglas is sued in her official capacity only. Further, the claims against Douglas, in her official capacity, are actually claims against her employer, Douglas County, Nebraska (“Douglas County”).

Plaintiff also names the County Court of Douglas County, Nebraska, as a Defendant in this matter. (Filing No. 1.) Like Plaintiff’s claims against Douglas, Plaintiff’s claims against the County Court of Douglas County, Nebraska, are construed as claims against Douglas County. As a municipality, Douglas County may only be liable under section 1983 if its “policy” or “custom” caused a violation of Plaintiff’s constitutional rights. *Doe By & Through Doe v. Washington Cnty.*, 150 F.3d 920, 922 (8th Cir. 1998) (citing *Monell v. Dep’t of Soc. Servs.*, 436 U.S. 658, 694 (1978)). An “official policy” involves a deliberate choice to follow a course of action made from among various alternatives by an official who has the final authority to establish governmental policy. *Jane Doe A By & Through Jane Doe B v. Special Sch. Dist. of St. Louis Cnty.*, 901 F.2d 642, 645 (8th Cir. 1990) (citing *Pembaur v. City of Cincinnati*, 475 U.S. 469, 483 (1986)).

To establish the existence of a governmental custom, a plaintiff must prove:

- 1) The existence of a continuing, widespread, persistent pattern of unconstitutional misconduct by the governmental entity's employees;
- 2) Deliberate indifference to or tacit authorization of such conduct by the governmental entity's policymaking officials after notice to the officials of that misconduct; and
- 3) That plaintiff was injured by acts pursuant to the governmental entity's custom, i.e., that the custom was the moving force behind the constitutional violation.

Jane Doe, 901 F.2d at 646.

Here, Plaintiff does not allege that there is a continuing, widespread, persistent pattern of unconstitutional misconduct by Douglas County or its employees, or that Douglas County's policymaking officials were deliberately indifferent to or tacitly authorized any unconstitutional conduct. (Filing No. 1.) Moreover, Plaintiff does not allege that an unconstitutional custom was the moving force behind his arrest. (*Id.*) Accordingly, Plaintiff has failed to allege sufficient facts to "nudge" his claims against Douglas County across the line from conceivable to plausible under the *Jane Doe* standard.

However, on its own motion, the court will permit Plaintiff 30 days in which to amend his Complaint to sufficiently allege a claim against Douglas County in accordance with the *Jane Doe* standard. Any amended complaint shall restate the allegations of Plaintiff's prior Complaint (filing no. 1) and any new allegations. Failure to consolidate all claims into one document will result in the abandonment of claims. If Plaintiff fails to file a sufficient amended complaint in accordance with this Memorandum and Order, this matter will be dismissed without prejudice for failure to state a claim upon which relief may be granted.

IT IS THEREFORE ORDERED that:

1. Plaintiff shall have until **March 27, 2013**, to amend his Complaint and clearly state a claim upon which relief may be granted against Douglas County in accordance with this Memorandum and Order. If Plaintiff fails to file an amended complaint, his claims against Defendants will be dismissed without further notice for failure to state a claim upon which relief may be granted.

2. In the event that Plaintiff files an amended complaint, Plaintiff shall restate the allegations of the current Complaint (filing no. [1](#)) and any new allegations. Failure to consolidate all claims into one document may result in the abandonment of claims.

3. The Clerk of the court is directed to set a pro se case management deadline in this case using the following text: Check for amended complaint on **March 27, 2013**.

4. Plaintiff shall keep the court informed of his current address at all times while this case is pending. **Failure to do so may result in dismissal without further notice.**

DATED this 28th day of February, 2013.

BY THE COURT:

Richard G. Kopf

Senior United States District Judge

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